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October 18, 2011

KEITH G. VON GLAHN (1952-2007)

Via ECF

Honorable Tonianne J. Bongiovanni, U.S.M.J.
United States District Court
District of New Jersey
Clarkson S. Fisher Federal Bldg. & U.S. Courthouse
402 E. State Street, Room 6 East
Trenton, New Jersey 08608

Re: *American General Life Ins. Co. v. Ellman Savings Irrevocable Trust, et al.*
Civil Action No. 3:08-cv-05364-MLC-TJB
Our File No.: 07478.00537

Dear Judge Bongiovanni:

This firm represents plaintiff American General Life Insurance Company ("American General") in connection with the above referenced matter. We write to request a Court Order for the deposition of third-party Lawrence Ellman.

Mr. Ellman is the son of the decedent Irving Ellman, who was insured under the life insurance policy with is the subject of the present action. Mr. Ellman is currently a resident at the Ohel Children's Home and Family Services located in Brooklyn, NY.¹ During the application process for the subject Policy, Mr. Ellman, or someone purporting to be Mr. Ellman, represented to American General that he was Irving Ellman's accountant. Specifically, Mr. Ellman (or his imitator) participated in a phone interview in connection with an Inspection Report, whereby he provided American General with information on Irving Ellman's income and net worth. American General later discovered during a routine investigation that Irving Ellman's income and net worth were materially misrepresented in the application for the Policy

¹ Ohel is an assisted living facility for disabled persons.

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and during the application process. Thus, Mr. Ellman's testimony is essential to American General's claims and defenses.

American General served Mr. Ellman with a subpoena for testimony in February 2011 (see subpoena, enclosed hereto). In March 2011, Mr. Ellman appeared in Wilson Elser's office, accompanied by an Ohel employee, on a date which was tentatively reserved for his deposition.² Mr. Ellman was cooperative and pleasant during the informal meeting. However, subsequently, counsel for American General has encountered great difficulty in scheduling Mr. Ellman's deposition. American General has made multiple attempts since March 2011 to schedule the deposition. I have been in regular communications with attorney Adam Lancer, in-house counsel for Ohel. In late August, Mr. Lancer advised that he wished to ascertain Mr. Ellman's interest in the Policy, if any, before setting a deposition date. In early October, Mr. Lancer further advised that he was in the process of securing legal representation for Mr. Ellman. The parties have been accommodating to Mr. Lancer's requests. Moreover, on several occasions, the parties have gone through the inconvenience of holding a date open for Mr. Ellman's deposition only to discover shortly before the reserved date that Mr. Ellman would not be appearing.

American General has no reason to believe that Mr. Ellman will be an uncooperative witness; rather, we believe this to mainly be a scheduling/timing issue. At this point, we have no choice but to seek a Court Order for Mr. Ellman's deposition. Accordingly, if the enclosed proposed Order meets the Court's approval, American General respectfully requests entry of same.

We thank your Honor for her attention to this matter.

Respectfully,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP



Karen D. Peck

KDP:kdp
Encls.

Cc: Ira Lipsius, Esq. (via ECF)
David BenHaim, Esq. (via ECF)
Daniel Grossman, Esq. (via ECF)
Adam Lancer, Esq. (via email)

² Mr. Ellman appeared for his deposition without seeking confirmation of the deposition date.

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